

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AS HOLDINGS, INC.)	
)	
Opposer,)	
)	Opposition No. 91182064
-vs-)	
)	Serial No. 76/461,157
H&C MILCOR, INC. f/k/a)	Mark: Miscellaneous Design
AQUATICO OF TEXAS, INC.,)	(Pipe Boot Product Design)
)	
Applicant.)	

*APPLICANT'S REPLY TO OPPOSER'S MEMORANDUM IN OPPOSITION
TO APPLICANT'S MOTION TO SUBSTITUTE AN EXPERT WITNESS AND
TO EXTEND TIME FOR EXPERT'S REPORT*

It is apparent from reading Opposer's Memorandum in Opposition to Applicant's Motion to Substitute an Expert Witness and to Extend Time for Expert's Report, that Opposer's counsel remains miffed by the Board's April 3, 2009 decision upholding Applicant's October 3, 2008 expert witness Notice.¹

For example, counsel states: "the period for expert disclosures was subsequently reopened --- by virtue of a computer-generated Order --- despite the lack of any express

1. Opposer's minute pica type and 1 1/2 inch line spacing would not be tolerated in most Federal Courts.



05-13-2009

rule stating that periods for expert disclosures are to be reopened upon the filing of a motion to extend a discovery period ---."

And in a footnote on page 2 of the Opposition:

"Opposer understands that the recent changes in the Rules applicable to the Trademark Trial and Appeal Board are in their infancy and interpretation issues are in the process of being addressed as the issues arise. Opposer makes note of this background, not as an effort to revisit the Board's ruling on the prior motion, ---."

And also on page 2 of the Opposition:

"Six months have elapsed when the parties received notice of the Board's Order of April 3, 2009 granting an additional thirty days in which to file a supplemental expert disclosure including a written report."

It appears Opposer's counsel still cannot live with the Board's April 3, 2009 decision.

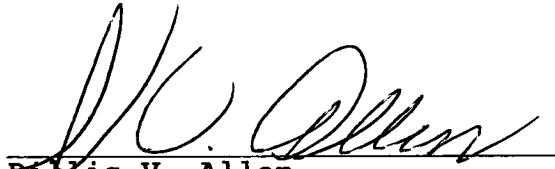
The bottom line is that extensions of time under the Federal Rules should be freely given if timely brought, as in this case, and when no substantial prejudice is placed on the non-moving party.

Opposer's counsel has not cited one iota of prejudice. He never attempted to take any of the depositions of Applicant's initially noticed experts: George Creil, Thomas Kelly and Ronald W. Resech.

The Board, in its Order of April 3, 2009, gave Opposer the opportunity to depose Applicant's expert after his report is served, and presumably that right will continue if the Board resets the hinge dates when and if this extension is granted.

While Applicant's Motion to Extend Time requested 30 days to and including June 1, 2009, since a decision on this Motion may not be rendered for several weeks, Applicant now requests 30 days from the date of the forthcoming decision.

Absent any prejudice to Opposer, Applicant's Motion to Substitute an Expert Witness and to Extend Time for Expert's Report should be granted.



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Reg. No. 22,460
Attorney for H&C MILCOR, INC.

DATED: May 12, 2009

CERTIFICATE OF SERVICE

This is to certify that on May 12, 2009, Applicant's Reply to Opposer's Memorandum in Opposition to Applicant's Motion to Substitute an Expert Witness and to Extend Time for Expert's Report, was sent via Federal Express to the Trademark Trial and Appeal Board on May 12, 2009, and a true and correct copy of said Reply was sent on May 12, 2009, via first-class mail, postage prepaid, to Opposer's counsel as follows:

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